

MINUTES FROM THE HUNTSVILLE CITY COUNCIL MEETING HELD ON THE 3RD DAY OF AUGUST, 2009, IN THE CITY HALL, LOCATED AT 1212 AVENUE M IN THE CITY OF HUNTSVILLE, COUNTY OF WALKER, TEXAS AT 6:00PM.

The Council met in a special session with the following:

COUNCILMEMBERS PRESENT: J. Turner, Tom Cole, Charles Forbus, Melissa Mahaffey, Lanny Ray, Mac Woodward, Jack Wagamon, Wayne Barrett and Dalene Zender

OFFICERS PRESENT: Bill Baine, City Manager; Kristin Edwards, Deputy City Secretary; Leonard Schneider, City Attorney

PRESENTERS PRESENT: Alvarez & Marsal Dispute Analysis & Forensic Services, LLC Senior Director Teri Wylie, Director Nancy Zielke, Associate Mark Conolon

REGULAR SESSION

CALL TO ORDER [5:30pm]

Mayor Turner called the meeting to order.

STATUTORY AGENDA

a. Presentation, discussion and possible action regarding the Hotel Occupancy Tax (HOT) compliance audit report. [Councilmember Forbus]

Mayor Turner began the meeting by addressing the format in which representatives from Alvarez & Marsal would be presenting the compliance audit report. He said the audit would be presented in phases, and after each phase, the Council would have an opportunity to ask questions of the representatives.

Councilmember Forbus acknowledged the other members of the HOT Board, Mayor Pro Tem Lanny Ray, Wayne Barrett, Dick Lindeman and Dave DeShaw, and spoke briefly on why the board decided to have the audit conducted. Forbus cited the State Municipal Hotel Occupancy Tax Code and the contract between the City of Huntsville and the Chamber of Commerce, saying that the Chamber was required by that agreement to keep all HOT funds in a separate account and not commingle the funds with any other money. He said the audit would show first that the Chamber had commingled HOT funds with funds related to the Visitor's Center and Gift Shop, and that the commingling of Gift Shop funds was improper. Further, Forbus cited the fiduciary responsibility taken on by the Chamber of Commerce with respect to HOT money and several instances of the group's abuse of that responsibility, such as the use of the funds for local advertising, staff lunches and dinners, and bonuses. Additionally, Forbus cited a section of the agreement requiring the Chamber to provide documentation of their proper use of HOT funds, and he said the audit would prove that the Chamber had failed to meet this requirement. Finally, Forbus referred to a section of the agreement requiring continued availability of HOT fund documentation for view by the HOT Board or any other person. He said from the beginning of the HOT board meetings that it was difficult to obtain said information from the Chamber and that when information was received, it was not complete. Taken together, Forbus said the list of items above constituted a full compliance audit. Forbus said Alvarez & Marsal was hired to complete the audit, and he introduced Wylie, Zielke and Conolon of the firm.

Teri Wylie began the presentation, saying that Alvarez & Marsal had been contacted in April in order to begin the compliance analysis and organizational assessment of the Chamber of Commerce's management of HOT funds. She said the assessment conducted covered fiscal years 2006, 2007, and 2008. She said that while the firm had information based on fiscal year 2009, it was not included in the presentation.

Wylie explained that the firm was asked to perform two tasks which would be divided into three presentation segments. She said the presentation would include a compliance analysis and assessment of the use of HOT funds, which she would present, and the best practice review, to be presented by Zielke.

Wylie said the firm worked with another local accounting firm to complete the compliance analysis and assessment portion of the audit. She said the audit process began by first gaining an understanding of the policies and procedures in place with respect to the management and use of HOT funds. From there, she said the firm took a top-down approach to find any major questions or concerns with the management and use of the funds. Then, she said the firm took a more detail-oriented approach by looking at specific invoices, and she said the information attained during that process would be what was included in the presentation.

Wylie presented Slides 1 - 17 of Exhibit A.

Upon discussing Slide 7, Wylie said the firm had estimated that the total cost for commingling funds was between \$3,000 and \$6,000 for all three fiscal years, but that the firm had not done that analysis officially. She also said the funds addressed were only in major problem areas which the firm deemed necessary to investigate.

Upon discussing Slide 8, Wylie discussed direct evidence indicating that commingling of funds was occurring between HOT funds and non-HOT funds. She said the fact that one bank account existed for the collection of those two types of

funds may have been excused by the practice of separate record-keeping, but that no such record-keeping was conducted, either. In 2008, she added, the Chamber did segregate out in revenue statements the monies coming in from the Visitor's Center and the money coming in from the Gift Shop. However, she added that the assets and liabilities related to that fiscal year were not segregated. As the assets side included the collective bank account, she said there was no way to justify or move past the commingling of funds proven.

Regarding Slide 9, Wylie said any invoices - documented properly or not - which a member of the Chamber of Commerce or the CVB could justify as a proper expense were not included in the slide. Therefore, the dollar amounts listed on the slide were solely based on spending which either could not be explained or was not backed up with any kind of documentation whatsoever.

The marketing costs, she said, were most likely related to postage and copying costs incurred by the CVB which were billed from the CVB to the Chamber. She said when you looked at marketing costs, you could only see checks as opposed to a description of what the funds were being spent on. The marketing (local) costs were local advertisement costs to Huntsville media outlets.

Wylie then addressed the American Express card with Chamber cardholders. She said as many as three but sometimes two cardholders were on the card at a time. She said, when the American Express bill was paid, that a check would typically be paid by one check from the Chamber, one from CVB and one from the Visitors Center/Gift Shop. She cited a \$2,500 example bill, and said the payments made did not add up to the \$2,500 the first month nor in following months. Wylie said she spent between one and two months attempting to reconcile American Express invoices with how they were accounted for in financial records, and the lack of a conclusion was the reason no definite amount was included in the AMEX line. She said the amount she knew of which was placed on the card was over \$50,000 for the three fiscal years.

Wylie completed her presentation, finishing the remaining slides of the Slide 1-17 phase.

Mayor Turner opened the floor for Council comments and questions.

City Manager Baine asked for clarification on the amount of money being spent on overhead allocations of the \$300,000 annual HOT funds. Wylie explained some of the sources of the funds.

Councilmember Wagamon addressed the bank accounts at First Victoria and First National Bank pictured on page 8, asking if those were the only two Chamber accounts in which HOT money was stored. Wylie said those were the only accounts for Visitor's Center and Gift Shop funds. Wagamon asked if there were other accounts for Visitor's Center, and Wylie said those accounts were either Citizens' Bank or First Victoria. She said the account had changed banks during the three-year period. Wagamon also asked if the audit had turned up instances where expenses had taken place with no backup or documentation. Wylie said there were some instances in which tracking expenses was difficult, but that in 2007 there had been a computer glitch which had destroyed some records. In general, however, she said the recordkeeping completed in the Chamber building was done very precisely.

Finally, Councilmember Wagamon addressed the percentage and amount of HOT funds used to pay specific employees and the base salaries of Chamber employees.

Councilmember Forbus addressed the Gift Shop, asking if most of the purchases for the shop were made with checks from the Visitors Center. Wylie said she thought most of them were, but that there were purchases made by the American Express card from which the payment source was unclear. She said those exceptions might not have been improper, but that it appeared odd.

Forbus also asked about market trips, asking if reimbursements for those trips were made, and Wylie said yes. Forbus also asked for the total verifiable cost that should not have been paid by the HOT funds per year, and Wylie said the amount was on page 7 of the presentation. She said the total amount was \$174,095. Forbus also addressed the final figure on page 17, asking if it was part of the \$174,095, which Wylie said was correct.

Councilmember Mahaffey asked if all of the complete American Express invoices from the three-year period had been received, and Wylie said no. She said she received anything to do with the CVB and/or Visitors Center. When Mahaffey asked about the format the information was received in, Wylie said copies of invoices with lines possibly marked out or otherwise prevented from view were included.

Mahaffey also addressed the receptionist's salary, which Wylie said was approximately \$21,000 in record, not including benefits. Wylie continued to discuss slide 17 and how the numbers were calculated by working backwards from budget figures.

Councilmember Forbus asked Wylie to explain fiduciary responsibility. In laymen's terms, Wylie said fiduciary responsibility was the requirement of an entity holding money to oversee the appropriate use of that money, and part of the appropriate use of that money is documenting what that money is used for. City Attorney Schneider added that it also implies putting the interests of the persons whose money you hold above your own.

(unclear portion of recording)

Councilmember Mahaffey asked if Wylie had been provided with actual bank statements, and Wylie answered that any documentation requested for a particular transaction was usually made available. She also said that some transactions would only have the actual check as supportive material, but some transactions were supported by all needed backup. Wylie also said the bank statements were very well organized.

Mayor Turner asked if the CVB made donations to the Chamber, and Wylie said yes, citing times when the CVB would purchase items from the Gift Shop. There were also times, she said, when the CVB would donate items to a Chamber event. The Mayor summarized that HOT money had been used to donate to Chamber events, and Wylie said yes.

Councilmember asked if those Chamber events were local events that had nothing to do with tourism, and Wylie said yes, according to the definition in the tax code.

Councilmember Cole asked if it was customary to divide cash and credit card sales, and Wylie said some do, and from a bookkeeping standpoint it could be considered easier. Wylie said credit card sales go into a separate bank account

from HOT funds, cash sales and donations, and in that separate account, revenues come in and all expenses go out for Visitors Center and Gift Shop. However, she said the Gift Shop had about half of its revenues in the credit card account, and until a sweep is conducted, the Gift Shop is being operated, in essence, by HOT funds.

Councilmember Cole addressed some of the blanks in the presentation, especially on page 9 in reference to inadequate documentation, and Wylie said at least two months had been spent trying to calculate those numbers with no conclusive results. She said additional work would have to be done to fill in those questions.

Zielke addressed the Council briefly to discuss the American Express card, specifically, how she felt it was used as a type of cash flow. She said a significant amount of expenses were going through the AMEX card on a day-to-day basis.

Councilmember Barrett called attention to slide 9. As he understood, he said inadequate supporting documentation meant no documentation with the exception of who was paid. Wylie said she didn't want to say it was none, and addressed marketing. She said you would have an invoice, for example, but it would be a one-line invoice which did not provide sufficient information to define the expense or the underlying business purpose. Barrett summarized that the firm had had to conjecture without proper information, and Wylie agreed. Barrett called attention to page 11, saying the payments should not have been allowed and were outside the scope of the contract, and Wylie agreed.

Zielke called attention to page 7, saying the page addressed the four areas of Wylie's argument, and to page 9, which listed spending not allowed by the contract.

Councilmember Forbus returned to the American Express cards, asking if there was just one or more than one and whose names were on the cards. Wylie said there was one American Express account with three cards in 2006, two in 2007 and two in 2008. She said the account was billed to Dee Everett. Forbus asked if everything bought was bought through the Chamber for CVB, etc., and Wylie said yes.

Councilmember Zender addressed page 7, asking if the \$174,000 represented the bulk of the misused amount or if there were a greater additional amount. Wylie said the firm had looked at the biggest sources, meaning they looked at the most significant areas of possible misuse. She said the number most likely wouldn't be doubled in a full investigation, but that she could not say what any additional amount of misused funds could be.

Councilmember Forbus asked if a full audit was done on the Gift Shop itself, and Wylie said the firm had done a perpetual inventory count of the items in the Gift Shop to match them to the general records.

City Attorney Schneider asked who the American Express cards were issued to. Wylie mentioned Dee Everett as a cardholder for all three years, Rhonda Ellisor in earlier years, Kimm Thomas following Ellisor, and others. Schneider also asked if any documentation existed which would prove that use of the card was for personal use as opposed to Chamber or CVB use, and Wylie said yes.

Councilmember Wagamon asked, related to the AMEX bills, if items were blacked out if they were investigated or not. Wylie said they couldn't see blacked out items, and Director of Finance Winston Duke said that meant tracing some expenses back to financial records was next to impossible, especially since the AMEX invoices covered multiple accounts. Wylie said the Chamber would not assist with deciphering the invoices.

Mayor Turner asked if Kimm Thomas was paid with HOT funds, and Wylie said she was paid with non-Chamber funds. Turner asked why she would have access to Chamber funds in that instance, and Wylie said she would ask the same of why Dee Everett was allowed access to HOT funds.

Councilmember Forbus asked if the Chamber ever reimbursed the CVB for donations or purchases of items for Chamber events, and Wylie said no. Forbus also asked if Wylie had seen any checks which reimbursed the Chamber or the CVB for personal purchases made with the AMEX cards, and Wylie said no on the invoices she looked at.

Mayor Pro Tem Ray asked about bank statements, specifically commenting on the fact that Wylie had said the statements were made readily available. Wylie said, when she was there, the people she worked with could walk straight to a drawer to receive information regardless of what it was. She said she received full cooperation, and that before ever leaving the building in a given day, that information was handed over. Ray said he was asking because the HOT Board had asked for the same information for months. Ray called attention to slide 8, speaking about commingling of accounts. He asked if a statement submitted to Council saying that no HOT funds were used in the operation of the Gift Shop would be considered untrue, and Wylie said yes. Ray asked if the commingling facilitated mis-application of HOT funds, and Wylie said it could have, but she didn't know if it did or not. Ray asked how many accounts, under the control of Chamber, HOT money is deposited in, and Wylie named one for CVB and one for Visitors Center. She said the Visitors Center account was in Mexia, and Ray asked why the money would be held in accounts out of the city. She said she was not given and did not ask for that information, but she thought taking business to another town would keep that business from being broadcast in a small town. Ray called attention to slide 9, saying both state law and contract required detailed accounts of all expenditures, and in the absence of that, expenses would be presumed improper. Ray addressed slide 14, and Wylie said the figures included were part of the budget presented to the City. She said annually the amount spent and the amount budgeted varied by approximately \$5,000 or \$6,000 annually. Ray addressed the over-allocation presented by Wylie, and asked if in her opinion, the City had the right to ask for those funds back, and she said yes. She said the full amount could be found on slide 7. Ray asked if Wylie had noticed any pattern of change during the 2009 fiscal year, and she said the firm had not looked in detail at the year. Ray asked if a document which indicated that HOT money was paying for 23 percent of Chamber in-house expense if that was off by about half, and Wylie said yes. Ray finally asked about a specific 2007 advertisement released by the Chamber and inquired about payment information. Wylie said, in 2007 and looking at Chamber's \$ 200 they spent, most was spent on events and the remainder most likely could not have paid for the advertisement.

Council adjourned for ten minutes and reconvened at 7:45 p.m.

Councilmember Forbus began the second portion of the meeting with questions for Winston Duke and Wylie.

Forbus said he noticed the expenses for the CVB and the Visitors Center had been decreasing for the last few years, and asked what type of a budget request was submitted by the Chamber each year for the two establishments. (Duke's answer inaudible in recorded minutes.)

Forbus also asked who owned the American Express card, and Duke responded that the account belonged to Dee Everett.

Finally, Forbus asked who received the award points for the card, and Duke said Everett had. Wylie discussed the number of points she had seen awarded, including a record of 57,000 points.

Mayor Pro Tem Ray addressed Wylie concerning Gift Shop and CVB checking accounts, asking who signs checks coming out of the accounts. Wylie answered that Dee Everett and the Chairman of the Chamber of Commerce Board could sign or counter-sign the checks.

Nancy Zielke then began her presentation, beginning with Slide 18 of Exhibit A.

Along with Slide 23, Zielke said the firm strongly recommended continuing the audit process in Huntsville with respect to HOT funds.

Mayor Turner asked if he was correct in understanding that commingling had not occurred in the other cities analyzed by Alvarez & Marsal, and Zielke said he was correct and that accounts in other cities were clearly divided. Turner also asked if AMEX cards were used as much as in this case, and Zielke said she did not see that in her research. Turner asked how our performance [with HOT money management] would compare and contrast with other cities, and Zielke said she had areas of improvement to recommend to the Council including quarterly reporting between entities. (inaudible period)

Mayor Pro Tem Ray discussed external agencies receiving HOT funds, and a question posed by the HOT Board related to how much HOT funds being spent had resulted in "putting heads in beds."

Councilmember Forbus discussed measurement criteria in other cities used to determine the amount of money granted to outside agencies through grants, and Zielke said other cities had scales to gauge the number of visitors being brought to an area in order to determine the amount of money granted.

Councilmember Wagamon said we do not do \$80 million in tourism, and Forbus responded that the \$90 million figure reflected in reports was travel money on the Interstate, state highways, gas, diesel, etc. Ray said six to seven percent of that total number could be attributed to tourism.

Wagamon asked if Forbus could remember the number of times the HOT Board had requested travel figures not be used in place of actual tourism figures. Forbus said six to seven percent of that number was still a considerable amount.

Ray said on April 9 the CVB president had agreed not to quote the figures again, but was later quoted as doing so.

Wylie began her second presentation beginning with page 24 of Exhibit A.

Regarding Slide 26, Wylie said one reason for the decrease in profitability for the Gift Shop could have been the economic situation the general population was dealing with during the time period.

Related to Slide 28, Wylie said inventory shrink could be related to broken or stolen items. Wylie said shrink reports should definitely be looked at by management, not only summary reports produced monthly.

Mayor Turner asked if it was accurate to assume that there was no monthly rent charged to CVB, and Wylie said yes.

Turner also asked if building maintenance was factored into monthly costs, and Wylie said no.

Councilmember Wagamon asked if it had been established earlier in the presentation that HOT funds were not to be used in the operation of the Gift Shop, and Wylie said yes. He then asked if evidence existed which would prove that those funds were used, and Wylie said yes, they would have had to have been used because credit card sales which account for half of the Gift Shop's revenue were segregated into a separate account not used for bill paying.

Councilmember Barrett addressed the evidence of both commingling of funds and confusing bank practices with respect to Gift Shop and HOT funds, and asked if those factors created doubt in Wylie's mind about the accuracy of the Gift Shop's profitability figures. Wylie said there was no way to validate those numbers from earlier years.

Mayor Turner asked if HOT funds were used to purchase Gift Shop inventory, and Wylie said yes. Turner asked if those purchases were reimbursed, and Wylie said that was hard to answer because the books wouldn't have shown a borrowing of money from HOT funds. Turner asked, if those expenses were not reimbursed, if they would fall under a category outside of the estimated \$174,000 amount, and Wylie said yes. Turner asked why a person could sign a voucher for an American Express purchase to buy items for the Gift Shop if no HOT funds were to be used for that purchase. Wylie said that question had not been asked.

Mayor Pro Tem Ray addressed slide 25, saying that the Chamber had claimed to have spent less than \$1,000 on advertising for three major events during 2007 while the figures on the slide suggested spending in excess of that amount. Ray asked if the advertising they used for their own purposes went into the improper funding total, and Wylie said yes.

Zielke began to speak regarding Slide 29 of Exhibit A.

Mayor Turner asked if accountability was a problem for other cities, and Zielke said it was a combination of factors. She said, over the years, most cities had to try different methods to get performance information. She said some entities had good survey methods in place and good relationships with hotel providers.

Turner said he saw an inconsistency of record-keeping; that some records are detailed and readily available, while other records are not, and he asked if that was normal for an organization. Wylie said she would agree that it was not normal.

City Attorney Schneider said the contract written between the City and the Chamber was written clearly, but maybe the only thing to add in the future would be an addendum to show examples of things that should not be done, even though he did not feel one needed to be added.

Councilmember Forbus asked if some grant application forms for HOT funds were available, and Zielke said yes.

Councilmember Wagamon asked about salaries, specifically asking how much Dee [Everett] made, and Wylie said it was between \$85,000 and \$86,000 plus benefits and retirement plus a car allowance, making the total approximately \$100,000. Wagamon asked for the total number of employees at the Chamber, and Wylie said there were six.

Mayor Pro Tem Ray asked how much Everett's car allowance was, and Wylie said there was a rate schedule which included mileage and credit card expenses. Ray also asked what answers the firm was given regarding the use of HOT funds for local advertising. Wylie said, upon a first discussion with Everett and Kimm Thomas with local advertising, and the differences between CVB advertising and Chamber advertising, they said the difference was about advertising through CVB for outside residents and advertising for local residents with Chamber funds. When asking about the use of HOT funds for local advertisement, Wylie said the two agreed that the spending was improper. Wylie said any local funding through the Visitors Center which did not meet the requirements of the Chamber's contract with the City was also included in the \$174,000 figure.

Mayor Turner opened the floor for general comments.

Ray had a question for Schneider. He asked if the contract was to be complied with strictly, and Schneider said yes according to state law. Ray summarized one, Chamber of Commerce has misapplied something north of \$175,000, two, that they cannot show that they used the rest of it effectively to bring tourists to Huntsville, and three, while they were the delegated entity in charge of HOT funds, no other groups received any of the money.

Councilmember Wagamon, looking at overhead allocation and payroll allocation, from a business point of view, said funds like that would be injected into payroll costs.

Mayor Turner said he appreciated the aspect of the presentation related to Best Practices, and he said he was very optimistic that the City could move forward from the findings presented. He said it was very important to uphold fiduciary responsibility and to hold people accountable when they are in charge of taxpayer or hotel/motel money.

Councilmember Mahaffey thanked the HOT Board for their efforts and echoed Turner's statement regarding fiduciary responsibility.

Mayor Turner made a motion to accept the audit report as presented, and to instruct the City Manager and City Attorney to conduct a list of options to consider as a City Council for future action on the matter to be presented on August 18 during the regular City Council meeting, and Councilmember Forbus seconded the motion.

The motion passed unanimously.

ADJOURNMENT [8:52pm]

With no further business, Mayor Turner adjourned the meeting.